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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,368	07/31/2000	Linda J. Babinski	J 2990	5421

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EXAMINER

ELHILO, EISA B

ART UNIT PAPER NUMBER

1751

DATE MAILED: 12/19/2002

152

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/629,368

Applicant(s)

BABINSKI ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 34-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Claims 34- 58 are pending in this application.

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35 is indefinite because the claim recites the limitation "value greater than about 3". It is unclear whether the value is greater than 2.99, 3.01 or exactly greater than 3.00.

Clarification is required.

#### ***Claim Rejections - 35 USC § 103***

- 3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nogami et al. (WO' 98/56337) in view of Yuhas (US' 4,226,889).

Nogami (WO' 337) teaches aqueous malodor reducing composition (see page 1, lines 9-17). This composition comprises, from about 0.0001 % to about 1% by weight of fragrance materials such as amber and musk having C log P of not less than 3.5 (see page 7, line 5 and page 8, lines 7-10), non-volatile organic compound surfactant/solubilizers such as alcohol

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ethoxylates (see page 11, line 16), from about 0.1% to 35% surfactants such as nonionic, and/or anionic and/or cationic and/or ampholytic (see 8, lines 14-16), non-volatile organic compound solvent/drying aid such as diethylene glycol (see page 20, line 16), metal salts such as copper and zinc salts as odor absorbers as well as other adjunct odor-controlling materials, antistatic and insect and moth repelling agents (see page 25, lines 3-7), buffering agents such as citric acid and their sodium salts (see page 27, lines 12-13), solvents such as ether derivatives of mono-, di- and tri-ethylene glycol (see page 28, lines 34-35) and water as a balance carrier (see page 19, lines 16-25). Nogami also teaches a method for using aqueous malodor reducing composition. The method comprises the step of applying of the composition to the fabrics, households or skin (see page 59, lines 33-35 and page 60, lines 1-11). The compositions have pH 4 (see page 64, Examples I-III), which is within the claimed range.

The reference fails to teach a composition for reducing malodor impression comprising fragrance components selected from fresh clean, spicy, floral, citrus, ozone and marine type perfumes. Further, the reference does not teach and discloses the percentage ranges of the solvent/drying aid and odor absorber as claimed. Furthermore, the reference does not teach the solution at pH level between 4.5 and 5.5. However, the reference teaches and discloses an aqueous malodor reducing composition comprising fragrance materials such as amber and musk (see page 8, lines 7-10). The reference also teaches a solution having a pH at 4 (see page 64, Examples I-III).

Yuhas (US' 889) in analogous art teaches a deodorant cosmetic composition comprising hydrophobic fragrance components such as floral and the spicy groups as claimed (see col. 2, line 68 and col. 3, line 1).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art would have been motivated to modify the primary reference by replacing the fragrances of amber and musk with fragrances such as spicy and floral as taught by Yuhas to make such a composition. Such modification would be obvious because Yuhas teaches that the perfumes such as ambergris and musk are aromatic compounds that are generally fall into several categories such as the floral, and the spicy (see col. 2, lines 59-68 and col. 3, line 1) and, thus, a person of ordinary skill in the art would expect that the use of floral and spicy as taught by Yuhas would be similarly useful and applicable to the analogous composition taught by Nogami.

Further, with respect to the percentage ranges of organic solvents and odor absorber as claimed, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the amount of the organic solvents and odor absorber in the composition so as to get the maximum effective amount. The person of ordinary skill in the art would expect such composition to have the similar properties to those claimed, absent unexpected results. Furthermore, with respect to the pH range as claimed in claims 37 and 58, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make a composition with specific pH as claimed because the reference teaches a composition having pH at 4 (see page 64, Examples I-III) which is closed to the claimed range and, thus, a person of ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

#### ***Response to Applicant's Arguments***

4 Applicant's arguments filed 9/30/2002 have been fully considered but they are not persuasive.

With respect to the rejection based upon Nogami in view of Yuhas, Applicant argues that Nogami does not teach or disclose the combination of non-volatile organic compounds for the purposes of surfactant/solubilizer and solvent/drying aid with the use of hydrophobic perfumes. The applicant also argues that musk and amber fragrances, which are not normally, considered fragrance components as used in the industry. The applicant also argues that Nogami composition combats odor in an entirely different manner than does the present invention. The applicant also argues that the solubilizing agents used by Nogami are low molecular weight polyols, which would not constitute non-volatile organic compounds formulations such as claimed in the present invention. Further, the applicant argues that Nogami suggests that preparation of a deodorizing cleaning composition requires a surfactant, which does not act as a solubilizing agent in combination with a separate solubilizer. Furthermore, the applicant argues that Yuhas does not teach the specific solubility characteristics of the fragrance oils used, it does not follow that one skilled in the art would be motivated to substitute such light fragrances for the heavy amber and musk fragrances specified by Nogami. The applicant further, argues that the Yuhas reference also applies to personal care applications, where the active deodorizing agents are fungicides and bactericidal compounds, not metal salts and finally the applicant argues that the teaching of Yuhas does not overcome the deficiencies of the Nogami reference and that one of ordinary skill in the art would not be motivated to combine the teachings of the two references in the manner suggested by the Examiner.

The examiner respectfully disagrees with the above arguments because Nogami (WO' 337) teaches aqueous malodor reducing composition comprising non-volatile organic compound surfactant/solubilizers such as alcohol ethoxylates (see page 11, line 16), from about 0.0001 % to

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about 1% by weight of fragrance materials having C log P of not less than 3.5 (see page 7, line 5 and page 8, lines 7-10) and non-volatile organic compound solvent/drying aid such as diethylene glycol (see page 20, line 16). Nogami also teaches aqueous malodor reducing composition comprising non-volatile organic compounds as solvent drying aid such as ether derivatives of mono-, di- and tri-ethylene glycol (see page 28, lines 34-35) which are similar to the claimed compounds and they should have properties similar to those claimed. Nogami further, teaches aqueous reducing composition comprising surfactants such as alcohol ethoxylates (see page 11, line 16), which are similar to claim surfactants and they should have properties similar to those claimed. Yuhas in analogous art teaches that the perfumes such as ambergris and musk are aromatic compounds that are generally fall into several well known categories such as the floral, and the spicy (see col. 2, lines 59-68 and col. 3, line 1) and thus a person of an ordinary skill in the art would be motivated to replace amber and musk with floral and spicy because these perfumes are belong to same categories. Yuhas Further teaches a deodorant cosmetic composition where the active deodorizing agents are perfumes (see col. 2, lines 25-31). Therefore, both references are in the same analogous art and they are combined to establish a prima facie case of obviousness.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the


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organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Elhilo

December 12, 2002

  
YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
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